Minutes of the 92nd meeting of the Board of the Equality and Human Rights Commission

18th November 2020 (10:15-12:35)
Via video conference using WebEx

Contents

Attending....1
Commissioners....1
Officers....1
Guests....1
1. Chair's introduction....1
2. Apologies for absence....1
3. Declarations of interest....1
4. Minutes....2
5. Actions Arising....2
6. Commissioner updates....3
7. Executive Updates....5
8. Strategic Item: Future of Human Rights....8
9. Stakeholder engagment review....8
10. Any other business....9

Attending:

Commissioners
Caroline Waters, Interim Chair
Rebecca Hilsenrath, Chief Executive Officer
Susan Johnson
Helen Mahy
Mark McLane
Lesley Sawers
Pavita Cooper
Suzanne Baxter

Officers
Ben Coates, Senior Principle, PEU (item 7.3)
Cath Denholm, Executive Director - England and Corporate Improvement and Impact
Melanie Field, Executive Director - Wales and Strategy and Policy
Charlie Hamilton, Principal - Policy (item 8)
Callum MacInnes, Principal – Corporate Governance
Bill Malloy, Director – Finance, Procurement and PEU (items 7.3 & 7.4)
Libby McVeigh, Director - Strategy and Governance
Laura Mingins, Principal, Head of Stakeholder Engagement (item 9)
Alastair Pringle, Executive Director - Executive Director Legal, Compliance and Scotland
Sarah Whelan, Senior Associate – Corporate Governance

Guests
Martyn Jones, Interim Chair - EHRC Wales Committee
Pina Sadar - Government Equalities Office
Alix Luddington, Senior Associate – Corporate Governance (Observer)

1. Chair's introduction

Caroline Waters welcomed attendees. Martyn Jones continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner.

2. Apologies for absence

Alasdair Henderson sent apologies.

3. Declarations of interest

3.1 Caroline Waters declared that she has joined the International Longevity Centre's Strategic Advisory Board and will formally join the Board in December 2020. She also previously declared that she has joined the Steering Group of the Governance Forum's Race Code.

3.2 No other declarations were made additional to those already registered.

4. Minutes and correspondence

4.1 Suzanne Baxter advised that the minutes of the 91st Board meeting of 10th September (EHRC 92.01) need to be updated to reflect her absence. All other minutes were agreed as an accurate record. **Action: Corporate Governance Team to update the September minutes.**

4.2. The Chair reminded the Board of the following items considered via correspondence:

4.2.1 **Assisted dying policy** – the Board were asked to provide views on the draft text and the Executive's proposal to share it reactively with stakeholders who express an interest; Board members commented w/c 2nd November and their comments were fed into the policy.

4.2.2 **BBC Investigation** – the final report was shared with Commissioners in advance of its publication last week;

4.2.3 **P&WC (People and Workspace Committee)** – the amended Terms of Reference (ToR) were sent to the Board on 06 November to review and approve. **Action: members to send any comments to Sarah Whelan by 20 November.**

4.2.4 **Strategic risk register** (Quarter 2) - as agreed at the September Audit and Risk Committee (ARAC) meeting, the Strategic risk register was sent to the Board on 06 November for information;

4.2.5 **Three nation's grid** - the regular summary of the views from the Scotland and Wales Committees and the England Strategy Team was circulated to the Board for information;

4.2.6 **Biographies** of the new Chair and Commissioners had been circulated; and

4.2.7 **Disability Advisory Committee feedback** on the future of Human Rights had been shared with the Board.

5. Actions Arising

5.1 The Board reviewed the actions arising from the previous Board meetings (EHRC 92.02). The Chair specifically highlighted the following actions:

5.1.1 **91/7.1.1 a) ii. Social care** - A proposal would be brought to the Board for consideration of the use of the Commission's inquiry powers at the Board call on the 9th December.

5.1.2 **91/9.3 & 91/9.4 - Stakeholder engagement review** - The Communications Team: will be offering individual 'download' information meetings with Commissioners; have produced a narrative

that sets out the key asks; and are working with the Scotland and Wales Committees and Disability Advisory Committee on the review. **Action: Corporate Governance Team to close these actions.**

5.1.3 **91/11.1– Transgender work** - the Executive have had further discussions with the Scotland Commissioner, the interim Chair of the Wales Committee and Caroline Waters as lead on the England strategy regarding the guidance for schools. **Action: Corporate Governance Team to close this action.**

5.1.4 **90/8.2.5 – Coronavirus Finance report** – the finance and resource implications of coronavirus and the implications for delivery of the business plan will be taken to the ARAC meeting on 1st December and brought to the January Board meeting.

5.2 The Board was content that the remaining actions were complete, progressing satisfactorily, or to be addressed under later agenda items.

6. Updates by exception from Committees / Lead Commissioners

6.1 Scotland Committee appointments:

Lesley Sawers updated members on the Scotland Committee appointments, which were progressing well. It had been a very successful recruitment process, with fourteen candidates being appointable. Members were advised that the Committee were proposing four members joining in January 2021 and two to join in January 2022. Given the high calibre of candidates, Board members were advised that the Committee were working with the Stakeholder team to engage with the unsuccessful candidates. **Action: Corporate Governance team to share a paper with members seeking approval of the six new members.**

6.2 Commissioner Working Group (CWG) - Is Britain Fairer (IBF):

6.2.1 Lesley Sawers advised members that the publication of the IBF Synthesis Report (which uses the available evidence to report on a small number of prioritised issues with the aim of supporting policy makers to respond effectively to the pandemic) had been well received. Stakeholders had quoted its evidence and were using it in their own work. **Action: Corporate Governance team to pass on the Board's thanks to those concerned.**

6.2.2 The CWG team are meeting on 08 December to discuss the overarching programme, and sequencing and scope of activity following the Board's agreement in principle that publication of the final IBF report be delayed until December 2022. A paper will come to the Board in January 2021. Members were advised that the new Chair, Baroness Falkner, has expressed a personal interest in this area of work.

6.3 Audit and Risk Committee (ARAC)

Susan Johnson spoke to the Strategic risk register (SRR) Quarter 2 (EHRC 2020-11-02), which had been shared with the Board in correspondence ahead of the meeting. Members were advised that ARAC had considered this paper at their 06 November meeting, where consideration was given to: the context of the coronavirus; funding; impact; workforce; stakeholder expectations and infrastructure. The SRR will come to the Board annually for an in-depth session. **Action: Corporate Governance Team to schedule the annual risk review sessions.**

6.4 Commissioner Working Group (CWG) - Human Rights Monitoring (HRM)

In Alasdair Henderson's absence, Caroline Waters updated members. The HRM team are publishing the report 'Children's rights in Great Britain: submission to the UN' on 20th November. Awareness raising with stakeholders, post-publication, will highlight key findings from the IBF synthesis report on the impact of the pandemic on children and young people.

6.5 BBC investigation

Suzanne Baxter advised members that the 'Investigation into unlawful pay discrimination at the BBC' report was published on 12th November. Members agreed that the Commission had received a balanced media response. Although the investigation did not find any unlawful pay discrimination in the cases assessed, it did identify areas where the BBC must make improvements to rebuild trust with women at the organisation and increase transparency around decision-making and communications. The team will continue to work with the BBC to ensure the recommendations in the report are acted upon. **Action: Corporate Governance team to pass on the Board's thanks to the Investigations and Communications Teams for their work.**

6.6 Wales Committee

6.6.1 Martyn Jones advised members that the Wales Committee is now at full complement. Whilst there is limited legal expertise on the Committee, there is now a legal advisor based within the Wales Team. A newly joined member of the Committee will shortly be replacing Martyn Jones as the Disability Advisory Committee representative. Martyn Jones met with Jane Hutt AM regarding impact assessments and the possibility of a Welsh race commission. Conversations are ongoing.

6.6.2 Board members highlighted their significant concerns regarding the absence of a permanent Wales Commissioner being appointed. It was agreed that this needed to be addressed as soon as possible, noting that appointments were the responsibility of the UK government.

6.7 Disability Advisory Committee (DAC)

Melanie Field advised members that DAC had met on 11 November. Key points from their discussions were that:

6.7.1 **Disability Unit:** engagement with the Disability Unit to inform the development of the national disability strategy was going well. Some DAC members have offered to support and feed into the DU's Disability Strategy plans.

6.7.2 **Social care inquiry proposal:** the DAC saw merit in all of the proposed options for an inquiry, but favoured those that made reference to 'choice, control and connection'. They also supported the care needs assessments / decisions on care packages, as they felt that they were the most likely to get traction and promote systemic change.

6.7.3 **The future of human rights:** DAC members had voiced that weakening of human rights was a grave concern. They felt that it was one of the biggest risks the Commission faced and that the Commission needed to continue to build on its good relationship with Government; and

6.7.4 **Stakeholder strategy and the DAC review** –members agreed to feed into the development of the wider strategic engagement mechanisms to be put in place once the DAC ends in March 2022. Members agreed that the current iteration of the DAC was positive, informative and engaging.

6.8 People and Workspace Committee (P&WC)

6.8.1 Caroline Waters advised members that the first meeting of the P&WC (formally the HRRC) on 12 November had been very successful. The Committee now covers people, infrastructure and information governance. Items discussed included: pay and reward (in year award proposal); the equal pay audit, the EmBrace programme- a development programme, which was designed by HMRC, specifically to support the development and career progression of their ethnic minority colleagues; ICT policies and strategy and the 'next normal' project looking at Commission ways of working following the pandemic.

6.8.2 The Committee noted that sickness absence at the Commission was relatively low compared to figures from this time last year, which was thought to be due to the impacts of the pandemic. It was noted that mental health issues had increased slightly. The members agreed that it was imperative that employees took their annual leave in spite of the current climate. Mental health and wellbeing will be discussed at a future P&WC meeting.

7 Executive Updates

7.1 Chief Executive report and Performance Report

Rebecca Hilsenrath presented the CEO's report (EHRC 92.03). The Board had reviewed the CEO's report and performance report (EHRC 92.04) ahead of the meeting. The following issues were considered further:

7.1.1 **Political implications:**

Increased engagement with government will continue in the coming months, with recent meetings taking place with No.10 Special Advisors.

7.1.2 ***Conservative party engagement:***

The Commission continued to monitor progress of the independent investigation into all forms of discrimination, including Islamophobia, commissioned by the Conservative Party. Their final report is expected to be published in February 2021.

7.1.3 **Social care inquiry**:

The Compliance team are currently narrowing down options for an inquiry, this will be discussed at the Board call on 9th December 2020.

7.1.4 **Education sector:**

Work is underway to ensure that any changes to exams and coursework processes due to the coronavirus epidemic adequately addresses equality and human rights implications, specifically their approach to equality impact assessments. Members agreed that the Commission needed to have oversight of this, especially given the impact of the government's previous decision to rely on mock exams and teacher's anticipated pupil's results, which had shown vast differences in outcomes between private and schools in deprived areas.

7.1.5 **Gender pay gap reporting:**

Members enquired into the impact of the suspension of enforcement on gender pay reporting. The Executive reassured members that the legislation had not changed in this area, employers with 250 or more employees must report annually to the Commission and this is still a legal requirement. Due to the epidemic the Commission paused enforcement and this will be reinstated in 2021. **Action: Legal team to circulate the draft paper 'Enforcement of the Gender Pay Gap Regulations from April 2021' with the Board.**

7.1.6 **Estates and office reopening:**

In light of the changes to the corona virus restrictions from 5th November, and to allow more time to complete maintenance works, the decision had been reluctantly taken to temporarily pause the re-opening of the Manchester office

7.1.7 **People updates:**

The EmbRace positive action programme launched on 17th November. This is a scheme aimed at ethnic minority colleagues in Associate and Senior Associate grades, piloted in HMRC and adapted to the Commission's needs. The launch had been a success.

7.1.8 **Update on Executive decision-making:**

Changes have been made to the Executive level decision-making processes. The aim was to strengthen existing processes to allow for clear and transparent decisions to be made at pace.

7.2 Performance report

The Board noted the performance report and advised that they felt that the current format of the report was both helpful and informative.

7.3 Spending review

7.3.1 Rebecca Hilsenrath presented the spending review paper (EHRC 92.05). Members were advised that, following the Commission's submission to the Cabinet Office as part of the initial 3-year Spending Review (SR) in August, the Treasury had announced on 21 October that this would be cancelled and replaced instead with a 1-year SR, with the outcome to be announced on 25 November. The expectation was that the Cabinet Office will not receive the full amount of funding that it had requested from the Treasury and will need to find further savings internally.

7.3.2 Alongside continued engagement with the Cabinet Office, the Executive will be working through the detail of how the Commission might respond should it be asked to make further cuts and would keep the Board updated as the situation develops.

7.3.3 The spending review will have a particular impact on the development of the 2021/22 business plan and the Commission's revised stakeholder strategy.

7.3.4 Members suggested an increase in partnership working; joint working on reports and strategies; task force approaches and seeking opportunities for secondees from other organisations might be helpful in responding to any reduction in funding.

7.4 Finance report

7.4.1 Rebecca Hilsenrath presented the Finance Report (EHRC 92.06), which provided a summary of: the 2020/21 budget allocations; the Period 6 (September) financial outturn and how the Commission is reducing its over programming to come in within budget.The paper noted the current resource forecast as £17.25m, which is £149k over the £17.1m funding envelope. This had since changed, and is now projected as an overspend of 18k, triggering underspend proposals. This is due to the impact of the coronavirus epidemic i.e. reductions in travel and office usage costs. A separate coronavirus finance report will go to ARAC on 01 December 2020 then be brought to the January Board meeting.

7.4.2 The Board agreed the Executive's approach to the underspend and advised they felt confident and assured by the reporting mechanisms, including the use of regular flash reports.

8. Strategic Item – Future of Human Rights

8.1 Caroline Waters advised members that the Executive were seeking Board approval of the principles set out in the paper (EHRC 92.07) and the strategic approach aimed at guarding against any weakening of human rights protections or the Commission's mandate as Britain's National Human Rights Institution (NHRI). Alasdair Henderson was thanked for his insight into the drafting of the paper. Members were asked to consider the specifics across nations, particularly the work already under way on strengthening rights in Scotland, including the incorporation of the UNCRC, and the importance of working in partnership with other stakeholders.

8.2 The Executive highlighted:

a) that the future of human rights is central to the Commission's remit;
b) the Commission's position as an 'A' rated NHRI;
c) the strong focus on this within the Commission's business planning;
d) the Commission's function as a GB wide organisation and the importance of sustained communications across the three governments;
e) the need to respect devolution;
f) the importance of public messaging; and
g) the impacts and context of Brexit.

8.3 The Board agreed with these points, specifically highlighting the:

a) need to be mindful that altering the wording of provisions risks diluting protections and that the Human Rights Act's explicit role in the devolution settlements for Scotland and Wales needs to be considered carefully;
b) Scotland Committee's membership of the Scottish Government's The National Taskforce for Human Rights, which also provides an opportunity to encourage progress in other nations;
c) need to consider environmental rights, specifically the convergence between human rights, animal rights and sustainability;
d) opportunities of a new generation engaging in this area during the coronavirus epidemic;
e) importance of clear and consistent messaging; and
f) consideration of human rights in the round, and not targeting certain areas of the discussion only.

8.4 The Board approved the principles and strategic approach, suggesting the following action: **Action: That the strategic approach could reference environment, sustainability and climate; that the team considers undertaking a campaign approach to engagement and, if applicable, produce a grid to cross check the connectivity, interdependence and gaps in positioning statements.**

9. Stakeholder engagement review

9.1 Rebecca Hilsenrath presented the stakeholder engagement review paper (EHRC 92.08), thanking Helen Mahy for her input in the paper's development. Members were reminded that they had approved the refreshed strategic approach at the September Board and were asked to approve the: 'plan-on-a-page', which distils and summarises the strategic approach to engagement; proposed approach to revising the strategic engagement structures, including the Disability Advisory Committee; and the priority stakeholder focus for the coming quarter (Annex A).

9.2 The Board approved the plan on a page, the revision of engagement structures and which stakeholder to prioritise for the coming quarter, subject to:

a) further engagement with broader organisations and civil society;
b) more explicit mention of successful engagement with areas not highlighted; and
c) further inclusion of Wales and Scotland stakeholders;

Action: To undertake a lessons learned exercise with regards to previous successful engagement plans.

9.3 Members were advised that plans are in place to schedule one-to-one discussions with existing Commissioners. These will allow a detailed understanding of Commissioner's personal networks, interests, expertise and availability from which exploration for further involvement in external engagement activity could be matched. Engagement with the new Commissioners and new Chair will take place during the induction process in December 2020.

10 Any other business

10.1 Caroline Waters advised that there was no imminent prospect of reinstating 'in person' meetings whilst staff had not returned to offices. Consideration is being given through the 'next normal' project of what a combination of virtual and in person Board meetings might look like. Plans are in place for a face-to-face strategy day next summer if possible.

10.2 With no other business being raised, Caroline Waters thanked Board members and staff for their contributions, and drew the formal meeting to a close.

10.3 Day 2 of the November meeting will take place the following day, 19th November 2020.

10.4 The 93rd Board meeting would take place on 13th January 2021.